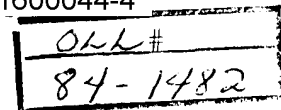




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503



**SPECIAL**

April 11, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Department of Justice (Attention: James Knapp)  
Department of the Treasury (Attention: Robert Powis)  
Department of Defense (Attention: Bill Snider and  
Al Franklin)  
✓ Central Intelligence Agency (Attention: Rob Davis)  
General Services Administration (Attention: Frank Carr)  
National Security Council

SUBJECT: House Government Operations Committee markup of H.R. 4620,  
"Federal Telecommunications Privacy Act of 1984".

Attached is a copy of the subject bill as ordered reported by the House Government Operations Committee. Please advise us no later than COB - MONDAY, APRIL 16, 1984, of your agency's recommendation for an Administration position on this legislation should it be considered by the full House. This is a firm deadline.

Direct your questions to Branden Blum (395-3802), the legislative attorney in this office.

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosure

cc: Connie Horner  
Mike Horowitz  
Mary Ann Chaffee  
Frank Seidl  
Frank Reeder  
Arnie Donahue  
John Roberts

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4620 OFFERED BY MR. BROOKS

Strike out all after the enacting clause and insert in lieu thereof the following:

1 That this Act may be cited as the ''Federal  
2 Telecommunications Privacy Act of 1984''.

3 SEC. 2. Title I of the Federal Property and  
4 Administrative Services Act of 1949 is amended by adding at  
5 the end thereof the following new section:

6 ''RECORDING OF CONVERSATIONS ON FEDERAL TELECOMMUNICATIONS  
7 SYSTEM

8 ''SEC. 113. (a)(1) Except as provided in subsections  
9 (b), (c), and (d), no Federal officer or employee shall  
10 cause or permit the recording of, or listening-in upon, any  
11 conversation conducted on the Federal telecommunications  
12 system established under section 7 of the Act of June 14,  
13 1946 (40 U.S.C. 295), or made available under section 110 of  
14 this Act.

15 ''(2) Except as provided in subsections (b), (c), and  
16 (d), no Federal officer or employee shall cause or permit  
17 the recording of, or listening-in upon, any conversation  
18 conducted on any other telecommunications system if the  
19 conversation (A) is between a Federal officer or employee  
20 and any other person and (B) involves the conduct of  
21 Government business.

1       ''(b) Without the consent of any party to a  
2 conversation, the recording of, or listening-in upon, such  
3 conversation may be conducted notwithstanding subsection (a)  
4 if such recording or listening-in is authorized under, and  
5 conducted in accordance with the requirements of, the  
6 Omnibus Crime Control and Safe Streets Act of 1968 (18  
7 U.S.C. 2510 et seq.), the Foreign Intelligence Surveillance  
8 Act of 1978 (50 U.S.C. 1801 et seq.), or other applicable  
9 law.

10       ''(c) With the consent of one party to a conversation,  
11 the recording of, or listening-in upon, such conversation  
12 may be conducted notwithstanding subsection (a) if the  
13 recording or listening-in is performed in accordance with  
14 the following conditions:

15           ''(1) The recording or listening-in is performed for  
16 law enforcement purposes in accordance with procedures  
17 established by the agency head, as required by the  
18 Attorney General's guidelines for the administration of  
19 the Omnibus Crime Control and Safe Streets Act of 1968,  
20 and in accordance with procedures established by the  
21 Attorney General.

22           ''(2) The recording or listening-in is performed for  
23 counterintelligence purposes and approved by the  
24 Attorney General or the Attorney General's designee.

25       ✓       ''(3) The recording or listening-in is performed at

1 a military command center for the purpose of ensuring  
2 the accuracy of verbal instructions to operating  
3 elements and preserving a record of such instructions to  
4 enhance the command and control of such elements.

5 '(4) The recording or listening-in is performed  
6 outside the United States for counterterrorism purposes  
7 and approved by the Secretary of State or the designee  
8 of the Secretary of State.

9 '(5) The recording or listening-in is performed by  
10 any Federal employee for public safety purposes and  
11 documented by a written determination of the agency head  
12 or the designee that cites the public safety needs and  
13 identifies the segment of the public needing protection  
14 and cites examples of the hurt, injury, danger, or risks  
15 from which the public is to be protected.

16 '(6) The recording or listening-in is performed by  
17 a handicapped employee, provided a physician has  
18 certified (and the head of the agency or designee  
19 concurs) that the employee is physically handicapped and  
20 the head of the agency or designee determines that the  
21 use of a listening-in or recording device is required to  
22 fully perform the duties of the official position  
23 description. Equipment shall be for the exclusive use of  
24 the handicapped employee. The records of any  
25 interceptions by handicapped employees shall be used,

1       safeguarded, and destroyed (notwithstanding subsection  
2       (h) of this section) in accordance with appropriate  
3       agency records management and disposition systems.

4       ''(7) The recording or listening-in is performed by  
5       any Federal agency for service monitoring but only after  
6       analysis of alternatives and a determination by the  
7       agency head or the agency head's designee that  
8       monitoring is required to effectively perform the agency  
9       mission. Strict controls shall be established and  
10      adhered to for this type of monitoring.

11      ''(d) With the consent of all the parties to a  
12      conversation, the recording of, or listening-in upon, such  
13      conversation may be conducted notwithstanding subsection  
14      (a). This includes telephone conferences, secretarial  
15      recording, and other acceptable administrative practices.  
16      Strict supervisory controls shall be maintained to eliminate  
17      any possible abuse of this privilege. The agency head or the  
18      agency head's designee shall be informed of this capability  
19      for listening-in or recording telephone conversations.

20      ''(e)(1) Each agency shall ensure that--

21           ''(A) all listening-in or recording of telephone  
22           conversations pursuant to paragraph (5), (6), or (7) of  
23           subsection (c) shall have a written determination  
24           approved by the agency head or the agency head's  
25           designee before operations; and

1           ''(B) service personnel who monitor listening-in or  
2       recording devices shall be designated in writing  
3       pursuant to paragraph (7) of subsection (c) and shall be  
4       provided with written policies covering telephone  
5       conversation monitoring which shall contain at a minimum  
6       the following instructions:

7           ''(i) no telephone call shall be monitored  
8       unless the Federal agency has taken continuous  
9       positive action to inform the callers of the  
10      monitoring;

11          ''(ii) no data identifying the caller shall be  
12      recorded by the monitoring party;

13          ''(iii) the number of calls to be monitored  
14      shall be kept to the minimum necessary to compose a  
15      statistically valid sample;

16          ''(iv) agencies using telephone instruments that  
17      are subject to being monitored shall conspicuously  
18      label them with a statement to that effect; and

19          ''(v) since no identifying data of the calling  
20      party will be recorded, information obtained by the  
21      monitoring shall not be used against the calling  
22      party.

23      ''(2) Current copies and subsequent changes of agency  
24      documentation, determinations, policies, and procedures  
25      supporting operations pursuant to paragraph (5), (6), or (7)

1 of subsection (c) shall be forwarded before the operational  
2 date to the General Services Administration. Specific  
3 telephones shall be identified in the documentation or  
4 determination to prevent any possible abuse of the  
5 authority.

6       ''(3) Procedures for monitoring performed under  
7 paragraph (1) of subsection (c) shall contain at a minimum--

8           ''(A) the identity of an agency official who is  
9 authorized to approve the actions in advance;

10          ''(B) an emergency procedure for use when advance  
11 approval is not possible;

12          ''(C) adequate documentation on all actions taken;

13          ''(D) records administration and dissemination  
14 procedures; and

15          ''(E) reporting requirements.

16       ''(4) Requests to the General Services Administration  
17 for acquisition approval or installation of telephone  
18 listening-in or recording devices shall be accompanied by a  
19 determination as defined in subsection (j)(2).

20       ''(5) Each agency shall ensure that a program is  
21 established to reevaluate at least every two years the need  
22 for each determination authorizing listening-in or recording  
23 of telephone conversations under this section.

24       ''(f)(1) The General Services Administration shall  
25 periodically review the listening-in programs within the

1 agencies to ensure that agencies are complying with this  
2 section and the Federal property management regulations and  
3 shall undertake investigations concerning noncompliance with  
4 paragraphs (5), (6), and (7) of subsection (c).

5       ''(2) The General Services Administration shall provide  
6 assistance to agencies in determining what communications  
7 devices fall within the listening-in or recording category.  
8 The General Services Administration shall also provide  
9 guidance and assistance in the development of administrative  
10 alternatives to the listening-in or recording of telephone  
11 conversations.

12       ''(3) The General Services Administration shall take  
13 appropriate steps to obtain compliance with this section if  
14 an agency has not documented its devices in accordance with  
15 this section.

16       ''(g) Any Federal officer or employee who causes or  
17 permits the recording of, or listening-in upon, any  
18 conversation in violation of this section shall be fined not  
19 more than \$10,000, or imprisoned for not more than one year,  
20 or both; and shall forfeit his office and employment with  
21 the United States.

22       ''(h) Any recording or transcript of a conversation made  
23 under (or in violation of) this section shall constitute a  
24 record deposited in a public office for purposes of section  
25 2071 of title 18, United States Code, and shall not be



1 disposed of except in accordance with the procedures  
2 established under chapter 33 of title 44, United States  
3 Code.

4 '(i) The functions and responsibilities of the General  
5 Services Administration and of agency heads and agency  
6 heads' designees under this section shall not be delegated  
7 or assigned.

8 '(j) For purposes of this section--

9 '(1) the term 'Federal officer or employee'  
10 includes any officer or employee of a Federal agency;

11 '(2) the term 'determination' means a written  
12 document (usually a letter) that specifies the  
13 operational need for listening-in or recording of  
14 telephone conversations, indicates the specific system  
15 and location where it is to be performed, lists the  
16 number of telephones and recorders involved, establishes  
17 operating times and a specific expiration date, and  
18 justifies the use, and is signed by the agency head or  
19 the agency head's designee;

20 '(3) the term 'agency head's designee' means only  
21 the individual designated pursuant to section 3506(b) of  
22 title 44, United States Code.'.